

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS,
HOUSTON DIVISION**

ROBIN CUSTER,
Plaintiff,

v.

CITY OF HOUSTON
Defendant.

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Civil Action No.: 4:17-cv-1338

JOINT MOTION TO AMEND DOCKET CONTROL ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff ROBIN CUSTER and Defendant CITY OF HOUSTON files this their Agreed Motion to Amend Docket Control Order in the above entitled and numbered cause. In support of said motion, Defendant would respectfully show the Court as follows:

1. This case involves claims of violations of civil and constitutional rights arising out of an alleged unlawful search of Plaintiff's home on or about March 5, 2015. On or about May 29, 2018, this Court issued a Rule 16 Scheduling Order. [Doc. #25]. On or about June 22, 2018, the Court entered an Amended Docket Control Order [Doc. #28].
2. Discovery is still being conducted in this matter. An essential witness in this case is Chris Massey, former HPD officer. Plaintiff has attempted to subpoena Mr. Massey for deposition but has not completed service. However, counsel for City of Houston has made telephone contact with him and discussed his need to cooperate as well as his availability for deposition. Mr. Massey informed counsel for City of Houston that he was out of the state, for work reasons, until late September; but would appear for a deposition on or after September 27, 2018. This information was communicated to the Plaintiff's counsel.

3. Plaintiff's expert designation is currently set for August 31, 2018, which is before the availability of Mr. Massey. As stated above, Mr. Massey is an essential witness to both parties in this case and his deposition is necessary for both parties to successfully prepare their respective claims and/or defenses. With the court-ordered mediation in mind, the parties are working together in an effort to schedule this necessary deposition and resolve any discovery issues, if any.

4. Pursuant to Federal Rule of Civil Procedure 16, the Court can modify a scheduling order on a showing of good cause. *See* Fed. R. Civ. Pro. 16; *Huval v. Offshore Pipelines, Inc.*, 86 F.3d 454, 458 (5th Cir. 1996). Good cause exists for granting this motion because the parties are conducting and continue to conduct discovery, the parties are working together to resolve discovery matters and granting said motion will provide the parties sufficient time to conduct necessary depositions needed to successfully prepare the parties respective claims and/or defenses.

5. The parties respectfully request the following extensions:

- (a) Plaintiff's expert designation deadline: October 26, 2018
- (b) Defendant's expert designation deadline: November 27, 2018
- (c) Discovery deadline: December 28, 2018
- (d) Mediation deadline: January 11, 2019
- (e) Motion deadline (include *Daubert*): January 25, 2019

The parties request that the Court set the dates for docket call and trial.

6. This motion is not being made for the purpose of delay or prejudice as the case is not set for trial at this time.

WHEREFORE, PREMISES CONSIDERED, Plaintiff ROBIN CUSTER and Defendant CITY OF HOUSTON respectfully requests that the Court grant this motion and enter a modified scheduling order extending the deadlines as stated herein.

Respectfully submitted,

BRENT COON AND ASSOCIATES

Date: July 27, 2018

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CERTIFICATE OF SERVICE

I certify that pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon each party to this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following:

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